



8011-01  
SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82661; File No. SR-NYSEArca-2018-10)

February 8, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 1, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to i) modify the credits the Exchange provides for routing certain orders to the New York Stock Exchange LLC (“NYSE”); ii) delete a pricing tier; and iii) delete certain obsolete dates from the Fee Schedule. The Exchange proposes to implement the fee changes effective February 1, 2018. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, to i) modify the credits the Exchange provides for routing certain orders to the NYSE; ii) delete a pricing tier, the Large Order Tier; and iii) delete certain obsolete dates from the Fee Schedule. The Exchange proposes to implement the fee changes on February 1, 2018.

*Primary Only ("PO") Orders*

A PO Order is designed to route to the primary listing market of the security underlying the order (i.e., NYSE, Nasdaq Stock Market, etc.) immediately upon arrival and the order therefore does not rest on the Exchange's order book. Because PO Orders do not rest on the Exchange's book, the Exchange charges fees or provides credits for those orders based on the fees and credits of the destination primary listing market, which are the non-tier fees and credits that the Exchange is charged by the primary listing market that receives the orders. For Tier 1 and Tier 2 PO Orders that are routed to the NYSE, the Exchange currently provides a credit of \$0.0014 per share for such orders.

In a recent rule filing, the NYSE modified its fee structure for equities transactions by decreasing the level of rebate that it provides to its members that provide liquidity from \$0.0014

per share to \$0.0012 per share.<sup>4</sup> In order to maintain the same relationship between the rate that the Exchange charges for a PO Order and the rebate provided by the destination venue, the Exchange is also amending the per share credit for PO Orders routed to the NYSE that provide liquidity to the NYSE to \$0.0012 per share. The Exchange proposes corresponding changes to the Basic Rates pricing section of the Fee Schedule.

#### *Large Order Tier*

In April 2017, the Exchange filed a proposed rule change to adopt a new pricing tier to incentivize large order flow (“Large Order Tier”).<sup>5</sup> The Large Order Tier adopted a lower fee of \$0.0010 per share to ETP Holders, including Market Makers, that execute an average daily volume (“ADV”) of 1,250,000 shares or greater of Market Orders, Market-On-Close Orders, Limit-On-Close Orders and Auction-Only Orders executed in the Closing Auction from orders of 650,000 shares and greater (“Large Closing Orders”) and that have a ratio of Large Closing Order shares to total shares executed during the month of at least 35%. The Large Order Tier has not encouraged ETP Holders and Market Makers to increase their activity to qualify for this pricing tier as significantly as the Exchange had anticipated they would. As a result, the Exchange proposes to remove this pricing tier from the Fee Schedule.

#### *Elimination of Obsolete Dates - Step-Up Tier*

In September 2017, the Exchange filed a proposed rule change to adopt a second way by which an ETP Holder or Market Maker could qualify for the Step-Up Tier.<sup>6</sup> As an incentive for

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<sup>4</sup> See Securities Exchange Act Release No. 82563 (January 22, 2018), 83 FR 3799 (January 26, 2018) (SR-NYSE-2018-03).

<sup>5</sup> See Securities Exchange Act Release No. 80516 (April 24, 2017), 82 FR 19775 (April 28, 2017) (SR-NYSEArca-2017-43).

<sup>6</sup> See Securities Exchange Act Release No. 81601 (September 13, 2017), 82 FR 43633 (September 18, 2017) (SR-NYSEArca-2017-104).

ETP Holders and Market Makers to direct their order flow to the Exchange, for the months of September 2017 and October 2017 only, the Exchange adopted lower requirements for ETP Holders and Market Makers to qualify for the pricing tier. Given that the months during which the incentive was applicable have passed, the Exchange proposes to delete from the Fee Schedule reference to the Step-Up Tier credits applicable to ETP Holders and Market Makers for the months of September 2017 and October 2017 as that language is now obsolete. This proposed change would have no impact on pricing.

*Elimination of Obsolete Dates – ELP Program*

In March 2017, the Exchange filed a proposed rule change to adopt the Exchange Traded Fund Liquidity Provider Program to incentivize ETP Holders and Market Makers (collectively, the “ELPs”) to provide displayed liquidity to the NYSE Arca Book in NYSE Arca-listed Tape B Securities (“ELP Program”).<sup>7</sup> The ELP Program requires participating ELPs to quote at the NBBO for at least 15% of the time for the billing month (“Quoting Standard”), and display at least 2,500 shares that are priced no more than 2% away from the NBBO at least 90% of the time for the billing month (“Depth Standard”), in at least 50 ELP Securities, to qualify for the pricing incentive. For the months of March 2017, April 2017 and May 2017, ELPs were only required to meet to meet the Quoting Standard to qualify for the incremental credit provided under the ELP Program. Beginning June 2017, ELPs must meet both the Quoting Standard and the Depth Standard to qualify for the pricing incentive. Given that the months during which the Quoting Standard only was required have passed, the Exchange proposes to delete from the Fee Schedule reference to such months as that language is now obsolete. This proposed change would have no

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<sup>7</sup> See Securities Exchange Act Release Nos. 80258 (March 16, 2017), 82 FR 14775 (March 22, 2017) (SR-NYSEArca-2017-28); and 80632 (May 9, 2017), 82 FR 22360 (May 15, 2017) (SR-NYSEArca-2017-50).

impact on pricing.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to routing credits for PO Orders that provide liquidity to the NYSE are reasonable because the Exchange's credits for routing an order that does not rest on the Exchange's order book, but rather is designed to route to the primary listing market on arrival, are closely related to the NYSE's non-tier rebate for its members for providing liquidity, and the proposed change is consistent with the recent change to the NYSE Price List to lower its non-tier rebate for providing liquidity. While the proposed change would result in a decrease in the per share credit for PO Orders routed to the NYSE that provide liquidity to the NYSE, the rebate that the Exchange would provide to ETP Holders is competitive with the rate that NYSE provides to its members for providing liquidity and would maintain the same relationship between the rebate provided by the venue to which the PO Order is routed and the fees charged by the Exchange for such orders. Further, the proposed change is equitable and not unfairly discriminatory because the rebate would apply uniformly across pricing tiers and all similarly situated ETP Holders would be subject to the same credit.

The Exchange believes that it is reasonable to delete obsolete pricing tiers from the Fee Schedule because ETP Holders and Market Makers have not increased their activity to qualify

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

for the Large Order Tier as significantly as the Exchange anticipated they would. The Exchange believes that it is equitable and not unfairly discriminatory to eliminate the Large Order Tier because, as proposed, the pricing tier would be eliminated entirely – ETP Holders and Market Makers would no longer be able to qualify for this pricing tier. This aspect of the proposed rule change would result in the removal of obsolete text from the Fee Schedule and therefore add greater clarity to the Fee Schedule.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to delete reference to obsolete dates from the Fee Schedule. The Step Up Tier and the ELP Program adopted specific requirements that were applicable for certain months in 2017. Given the months during which the lower requirements were applicable have passed, the Exchange believes deletion of the outdated language will bring clarity to the Fee Schedule.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the routing credits would not place a burden on competition because the Exchange is maintaining the existing relationship between the rebate provided by the Exchange for PO Orders that are routed to the NYSE that provide liquidity on the NYSE and the non-tier rebate the NYSE provides to its members that provide liquidity. In addition, the removal of obsolete text from the Fee Schedule would not have any impact on inter- or intra-market competition because the proposed change would result in a streamlined Fee

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<sup>10</sup> 15 U.S.C. 78f(b)(8).

Schedule without any impact on pricing.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>13</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2018-10 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2018-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

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<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2018-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

